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Flip-Flopping in a Representative Democracy

Sønderholm, Jørn Duus

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Flip-flopping in a representative democracy

1. Introduction

In the United Kingdom (UK), a referendum was held on June 23rd, 2016, to decide whether the UK should leave or remain in the European Union (EU). Leave won by 52% to 48%. In order for the UK to leave the EU, it has to invoke Article 50 of the Lisbon Treaty. A court challenge to the UK government's right to trigger the Article 50 process without getting approval from the British Parliament was successful in the UK Supreme Court in January 2017. In early 2017, a Brexit bill (European Union (Notification of Withdrawal) Bill 2016) was put to a vote in the British Parliament. Members of the House of Commons (MPs) approved the bill on February 1st, 2017, but shortly after, it was amended in the House of Lords. MPs then reversed those changes, and the unamended Brexit bill became law on March 14th, 2017 (Hunt and Wheeler 2017).

The vote in the House of Commons, on February 1st, 2017, about whether or not the UK should leave the EU raises a host of important theoretical questions in normative political theory. Examples of such questions include: i) what is the justification for holding referenda in a representative democracy? (Qvortrup 1999); ii) when should a supermajority vote be required in a legislature to pass legislation? (Thompson 2015); iii) should a member of a legislature, assuming that she is a member of a political party, always vote in a manner that reflects the official view of that party? (Kam 2011). Another question is this:

Main Question In a representative democracy, can Mary, who is a member of a legislature, legitimately flip-flop and vote in accordance with the majority view on Issue when Mary, prior to getting knowledge, through a referendum result, of what the

majority view is on Issue, has defended, and recommended to voters, a view that is logically inconsistent with the majority view?¹

A few clarifications about the Main Question are in order. First, throughout the paper, “the majority view” is used to designate the position that the majority of eligible voters in Mary’s constituency, who have taken a stance on Issue, have embraced. It is of some importance to make clear what “the majority view” precisely denotes. To see this, consider the fact that the favored explication of “the majority view” leaves open the possibility that this view is different from, say, i) the view that the majority of adult individuals in Mary’s constituency would embrace if they either made use of their political right to take a stance on Issue or were given the political right to take a stance on Issue or ii) the view that the majority of eligible voters in some constituency (or constituencies) other than Mary’s, who have taken a stance on Issue, have embraced. Second, the concept of legitimacy that is being used in the Main Question is that of moral legitimacy as opposed to legal legitimacy. Third, if an affirmative answer to the Main Question is correct, then there is a further question as to how Mary can legitimately flip-flop.

The Main Question is not only an important theoretical question in normative political theory. Consider, for example, that when voting on the Brexit bill took place on February 1st, 2017, 443 MPs voted who had previously declared for Remain. Of these 443 MPs, 328 MPs voted in favor of the Brexit bill (Hanretty 2017). This means, in the parlance of this paper, that 328 MPs flip-flopped on the Brexit issue. If what is being argued in this paper is correct, then the paper’s conclusions can be used, together with other input, to determine the issue of how many of these MPs legitimately flip-flopped.²

¹ “Issue” is a variable that can stand for any political issue.

² Nine MPs voted against the Brexit bill despite the fact that the majority of constituents, in each of the nine constituencies, were in favour of the UK leaving the EU (Tapsfield 2017), and of the 154 MPs voting who had previously declared for Leave, all voted in favor of the bill (Hanretty 2017).

Determining this issue is of some practical importance to UK voters trying to decide whom to vote for at the next general election. If Mary has a record of illegitimate flip-flopping on Issue, she is certainly less worthy of re-election than if she had no such record.

This paper defends an affirmative answer to the Main Question. This conclusion is arrived at by discussing various combinations of empirical views and views in normative political theory that might make it the case that Mary can legitimately flip-flop. It is argued that there are several such combinations that allow Mary to legitimately flip-flop. It is also argued that there are several such combinations that make it the case that if Mary is committed to any of them, she is engaged in illegitimate flip-flopping. It follows from the concept of illegitimate flip-flopping that there is something wrong with being engaged in this type of flip-flopping. However, there is an important question with respect to exactly what the wrong-making feature(s) of illegitimate flip-flopping is. Exactly what type of wrong is Mary guilty of if she engages in illegitimate flip-flopping?

I am open to the suggestion that there may be multiple wrong-making features of illegitimate flip-flopping. However, all of the examples of illegitimate flip-flopping identified in this paper are ones in which the wrong-making feature is that of inconsistency. In each of these examples, Mary accepts a particular normative view, and she then goes on to act in a manner, or form a belief, that is inconsistent with a least one prescription of the normative view that she professes to accept. These considerations make it possible to elaborate a little bit on the previous suggestion that Mary is less worthy of re-election if she has a record of illegitimate flip-flopping than if she had no such record. Having inconsistent beliefs, as well as prescribing inconsistent courses of action, is a serious intellectual vice that Mary should strive to avoid.³ Moreover, if she engages in any of the types of illegitimate flip-

³ One might ask: “What is so bad about Mary having inconsistent beliefs?” At least three answers can be given to this question. First, Mary’s beliefs cannot all be true. Second, voters who elected Mary cannot be sure that she, in the legislature,

flopping identified in this paper, she is guilty of being inconsistent, and Mary is certainly less worthy of re-election if she has a record of being inconsistent than if she had no such record.

To get the discussion going, the next section contains a theoretical example that will function as a backdrop for the paper's arguments about how Mary can, and cannot, legitimately flip-flop. The last section of the paper moves beyond the Main Question and the related issue of how Mary can legitimately flip-flop. This section raises the question of whether the trustee view, of what obligations a legislator has in a representative democracy towards her constituents, is mistaken. An alternative to the trustee view is presented and discussed, and it is concluded that this alternative view is implausible.

2. A theoretical example

Consider Mary who is a member of Happyland's legislature. Happyland has recently held a referendum on Issue (assume that this is the issue of whether Happyland should remain in or leave the Union of Happy States). In the run-up to this referendum, Mary has unequivocally argued for position Remain on the basis of evidence E (e.g., that Remain likely leads to economic growth and high employment and is an essential element of a just immigration policy). Mary has, in other words, cited E as a set of conclusive reasons for being in favor of Remain. The nationwide result of the referendum was, however, the opposite of Remain: namely Leave. A majority of the eligible voters in Happyland, who voted in the referendum, voted Leave. Likewise, a majority of the eligible voters in Mary's constituency, who voted in the referendum, voted Leave. For various judicial reasons, it, however, turns out that the result of the referendum is not legally binding. The constitution of Happyland clearly says that Issue has to be determined through a vote in Happyland's legislature. Such a vote is therefore

will defend those views on the basis of which she was elected. Third, Mary will be unable to offer sound arguments in favour of those policy proposals that promote the interests of her constituents. Likewise, she will be unable to offer sound arguments in favour of rejecting those policy proposals that go against the interests of her constituents.

scheduled. Lastly, assume that Happyland is a representative democracy in the following, standard sense:

Representative democracy is a form of government in which the citizens of the state exercise their popular sovereignty through legitimately elected representatives. In a representative democracy, the citizens choose their representatives by voting in elections. Typically, the chosen representatives then congregate in a legislative assembly in which they debate policy and determine legislation. Representative democracy is often contrasted with more participatory forms of democracy in which citizens play an active role in the decision-making process. The classical theory of representative democracy suggests that the representatives should act in accord with the will or interests of the citizens (Bevir 2010).⁴

Before moving on, it is important to note two things about this example. First, it stipulates away cases in which the nationwide referendum result differs from the referendum result in Mary's constituency. Such cases raise a number of interesting theoretical questions. Imagine, for example, that the referendum result in Mary's constituency is one that favors Remain whereas the referendum result in all the other constituencies of Happyland is one that favors Leave. Should Mary vote Remain or Leave in the upcoming vote (in deliberating about this question, we can leave to one side the whole issue of Mary flip-flopping)? Either one might think that i) Mary ought to honor the majority view, ii) Mary ought to honor the view preferred by the majority of voters in Happyland or iii) Mary can just toss a coin to decide which view to honor. Exploring this, and other related questions that arise from the

⁴ As a heuristic to remember the key theoretical issue raised by this example, it is useful to think of Mary in Happyland as being in a position that is rather similar to that of any of those British MPs who prior to the 2016 UK referendum argued for remaining in the EU and then had to make up their mind about what to vote in the House of Commons vote on February 1st, 2017.

majority view being different from the view embraced by the majority of voters in Happyland, lies, however, outside the scope of this paper.⁵

Second, nothing of importance in this paper hangs on Mary getting knowledge of what the majority view is through a referendum result in the standard sense of what a referendum result is.⁶ The important theoretical points of the paper would not change if it were assumed that Mary got knowledge of the majority view through other means such as, say, direct reporting by voters to a website or through divine revelation. To get the analogy right, it must, however, be assumed that the latter two means through which Mary might obtain knowledge of what the majority view is are also means through which her constituents can know that Mary knows what the majority view is and can themselves know what the majority view is.⁷ So, with respect to the first option, Mary's constituents must themselves have access to the database that reveals what the majority view is and they can know that Mary can access this database. With respect to the second option, the deity must reveal what the majority view is to all of Mary's constituents, and these individuals can know that the deity has also revealed the majority view to Mary.

In relation to this second point, it is important to be aware that it is empirically impossible for Mary to acquire knowledge of what the majority view is through an opinion poll. An opinion poll gathers information about how a subset of eligible voters intends to vote in an upcoming election, and from this information, a hypothesis is put forward about what the overall election result will be (McLean and McMillan 2009). However, one cannot be sure that the subset of voters, who have

⁵ My intuition on this issue is that Mary ought to honor the majority view because she has her political mandate from her constituents and not from voters in other constituencies.

⁶ I take the results of the UK EU referendum, held on June 23rd, 2016, and the Spanish referendum on the European Constitutional Treaty, held on February 20th, 2005, to be examples of referendum results in the standard sense of what a referendum result is.

⁷ Put somewhat differently, one can say that any alternative means, i.e. means different from a referendum result, through which Mary acquires knowledge of the majority view is subject to a publicity requirement. Information about what the majority view is must, that is, be publicly available.

participated in the opinion poll, actually vote in a manner that is identical to what they reported when asked about what they will vote. Moreover, one cannot be sure that the subset of eligible voters picked for participation in the opinion poll is representative of the entire electorate.

With these clarifications in place, we can return to the task of trying to answer the Main Question. The answer to this question depends, in the first instance, on Mary's stance on an issue well summarized by Mill:

Should a member of the legislature be bound by the instructions of his constituents? Should he be the organ of their sentiments, or of his own? Their ambassador to a congress, or their professional agent, empowered not only to act for them, but to judge for them what ought to be done (Mill 1861: 216).

If Mary's stance on this issue is that a member of the legislature should be the organ of her own sentiments and be a professional agent empowered by her constituents to judge for them what ought to be done, then Mary is accepting what Pitkin famously designates "the trustee view" of representation (Pitkin 1967: 121).⁸ If Mary's stance on this issue is that a member of the legislature should be bound by the instructions of her constituents and be the organ of their sentiments and is empowered only to

⁸ The trustee view has a number of important proponents in the history of philosophy. Consider, for example, the following two passages: "...it ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinion, high respect; their business, unremitting attention. It is his duty to sacrifice his repose, his pleasures, his satisfactions, to theirs; and above all, ever, and in all cases, to prefer their interest to his own. But his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. These he does not derive from your pleasure; no, nor from the law and the constitution. They are a trust from Providence, for the abuse of which he is deeply answerable. Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion" (Burke 1852: 236).

"And the whole of that great question is involved in the inquiry whether they should make it a condition that the representative shall adhere to certain opinions laid down for him by his constituents. No reader of this treatise can doubt what conclusion, as to this matter, results from the general principles which it professes. [...]. Superior powers of mind and profound study are of no use if they do not sometimes lead a person to different conclusions from those which are formed by ordinary powers of mind without study: and if it be an object to possess representatives in any intellectual respect superior to average electors, it must be counted upon that the representative will sometimes differ in opinion from the majority of his constituents, and that when he does, his opinion will be the oftenest right of the two. It follows that the electors will not do wisely if they insist on absolute conformity to their opinions as the condition of his retaining his seat. The principle is, thus far, obvious;" (Mill 1861: 219).

act for her constituents, then Mary is accepting what Pitkin designates “the delegate view” of representation (Pitkin 1967: 121).⁹

3. How to legitimately flip-flop when accepting the trustee view

Assume that Mary accepts the trustee view. Here are four ways in which Mary might be able to legitimately flip-flop. First, Mary can maintain that E no longer holds. If Mary is to be able to legitimately vote Leave, she must be able to point to some new evidence that is available to her now, and which was not available to her prior to the referendum. If Mary flip-flops and is unable to point to any such evidence, and thereby is committed to the view that E still holds, she is inconsistent and fails to live up to her own advice to her constituents. One obvious piece of new evidence that Mary can point to, and thereby plausibly claim that E no longer holds, consists in the fact that she now has knowledge of what the majority view is. Assume now that Mary submits that her new knowledge of this is new evidence and that she cites this new evidence as the reason for her intention to flip-flop and vote Leave in the upcoming vote.

Perhaps one is inclined to believe that this way of reasoning by Mary is illegitimate. On the trustee view, Mary is supposed to judge for her constituents, and she has been elected by them to represent their interests, in the legislature, as she sees fit. The trustee view conceptually entails that Mary is not morally allowed to act simply as an ambassador for her constituents. If Mary is to avoid being in conflict with the trustee view, and if she cannot cite any new evidence as to why she has

⁹ The delegate view also has a number of proponents in the history of philosophy. Consider, for example, what Melancthon Smith wrote in 1788, in opposing the American constitution: “The idea that naturally suggests itself to our minds, when we speak of representatives is, that they resemble those they represent; they should be a true picture of the people” (Ketcham 2003: 342). Likewise, in a speech given by Mirabeau to the French Constituent Assembly in January 1789, it is said that: “a representative body is to the nation what a chart is for the physical configuration of its soil: in all its parts, and as a whole, the representative body should at all times present a reduced picture of the people – their opinions, aspirations, and wishes, and that presentation should bear the relative proportion to the original precisely as a map brings before us mountains and dales, rivers and lakes, forests and plains, cities and towns” (Pitkin 1969: 77). I owe both of these examples to (Pettit 2010).

changed her mind on Issue, in addition to the fact that she now has knowledge of what the majority view is, she must, one might suggest, stay true to her political conviction and vote Remain.

One objection to this argument exploits vagueness in the concept, prominent in the explication of the trustee view, of what it is to be a professional agent empowered by one's constituents to judge for them what ought to be done. Mary is not, the objection goes, doing anything that is prohibited by the trustee view if she says that she is supposed to be such an agent and then goes on to suggest that it is part and parcel of being an agent of this nature that one can, on any issue, no matter how mundane it is, legitimately allow oneself free hands to let the electoral input of one's constituents be the decisive factor in the process of making up one's own mind about what ought to be done.¹⁰ If the agent has no such free hands, then she is severely restricted in her role of being an agent for her constituents. The constituents are dictating to her that there is a significant way of performing her role as their agent that is not open to her. This, in turn, means that the agent is no unconstrained agent, but has properties that make her akin to an ambassador who, when it comes to making decisions about what ought to be done, is considerably restricted by the will of the constituents who accredited her.

Mary can sum up this objection by making reference to a passage from Mill in which he in more detail lays out his view on what obligations and rights a representative has if she accepts the trustee view.¹¹ Mill writes "a man of conscience and known ability should insist on full freedom to act as he in his own judgment deems best; and should not consent to serve on any other terms" (Mill 1861:

¹⁰ Throughout the paper, the term "electoral input" denotes information about what the majority view is irrespective of whether this information has come to light via a referendum result, direct reporting to a website, divine revelation or any other means that can yield information about what the majority view is.

¹¹ It is worth keeping in mind here that this section describes Mary's possibilities of engaging in legitimate flip-flopping on the assumption that she accepts the trustee view. This section is not meant as a defence of the trustee view against competing views, and a substantial argument is therefore not needed for the idea that we should accept the trustee view. The Mill quote is just used to describe/flesh out an aspect of a view (the trustee view) that is assumed to be correct. In the last section of the paper, a substantial argument will be offered as to why the trustee view enjoys an advantage over a competing view.

227).¹² Mary can then go on to say that she desires to serve the interests of her constituents and that she is a woman of conscience and known ability. She is therefore entitled to insist, as Mill suggests, on full freedom to execute her role as a professional agent. Such full freedom, moreover, certainly involves the right to be swayed, in her decision making, by the electoral input of her constituents.

I find this objection convincing. I therefore conclude that Mary can legitimately flip-flop by using the strategy, outlined above, that essentially involves maintaining that E no longer holds and citing, as exclusive evidence for this, that Mary now knows what the majority view is. It is, however, important to note that in order for Mary to legitimately flip-flop, through the utilization of this strategy, she must say that voting Leave is now her preferred view.¹³ Emphatically, Mary does not legitimately flip-flop if she maintains that Remain is her preferred view but intends to vote Leave out of mere deference to the majority view. This way of proceeding would be to reduce herself to being merely an ambassador for her constituents, and by doing that she would be in violation of the trustee view that she professes to accept.

It is perhaps worthwhile to note that this discussion about what it means for Mary to be a professional agent, in the relevant sense, and what it means for her to have full freedom in terms of executing her role as such an agent, is a discussion that has some parallels to discussions about: i) whether a society that defends significant and robust rights to free speech should go so far as to accept utterances that seek to severely restrict freedom of speech (Hare and Weinstein 2010); ii) whether an

¹² What exactly does “full freedom” mean here? This is a question that can only be answered by engaging in Mill exegesis. It lies outside the scope of this paper to engage in such exegesis, but luckily, for present purposes, this activity can be circumnavigated by making the following assumption: either Mill is of the opinion that a member of the legislature has full freedom *within the law* within which she operates or he means that such a member also has freedom to break the law. I offer no suggestion as to which of these views is the one that Mill accepts. However, if it is the former, then Mary can sum up the objection by making an unqualified reference to the passage from Mill. If it is the latter, then Mary can only sum up the objection by making a qualified reference to the passage from Mill: a qualification to the effect that a member of the legislature only has full freedom within the law within which she operates.

¹³ Moreover, Mary must, of course, be honest when she says this.

open and free democratic society should grant full political rights to political parties/individuals who campaign for the dissolution of democratic rule (Müller 2012); iii) whether self-ownership, of the sort advocated by Nozick, allows for an individual to legitimately enslave herself (Nozick 1974: 58, Cohen 1995). The overall line of argument that have been used above to defend the conclusion that Mary is entitled to letting the electoral input of her constituents be the determining factor in her deliberations about how to vote, is a general one that, with appropriate changes, can be invoked in order to defend an affirmative answer to i), ii) and iii). At an abstract level, what unites the present discussion about what it means to have full freedom to execute one's role as a professional agent and discussions about issues i) - iii) is that they are all, respectively, an instantiation of a more general discussion of whether or not the fact that one is free to x entails that one is also free to undermine the freedom to x.

Second, Mary can suggest that she can legitimately flip-flop because her failure to flip-flop will likely lead to her losing her seat in the legislature at the next election. As an empirical hypothesis, Mary's constituents will probably see her failure to vote Leave as an inexcusable act of disregard for her constituents' interests, and as a result of this, they will not re-elect her. This empirical hypothesis seems plausible, but its plausibility is, I suggest, not something that enables her to legitimately flip-flop.¹⁴ By accepting the trustee view, Mary is committed to the idea that she is allowed to disregard the majority view. When this view was not known to Mary, she argued for Remain, and if she now flip-flops, and votes Leave, exclusively out of self-interest, there is no story to the effect that she, through her voting, is seeking to further the interests of her constituents (as she is under an obligation to do in

¹⁴ There is some evidence, in the political science literature, that this empirical hypothesis is correct: "The preceding discussion raises an important question for students of legislative politics: What exactly is the type of behaviour most likely to upset voters? To be sure, an overall pattern of legislative voting that is viewed as too dissimilar from constituent interests can result in a premature departure from Congress" (Carson et al. 2010: 601).

virtue of accepting the trustee view). Mary's decision to vote Leave is, after all, motivated solely by a concern for, and reflection upon, her own political, economic and social interests and not by a concern for, or a reflection upon, the ditto interests of her constituents, and she therefore fails to be an agent, of the relevant kind, for her constituents.

I suggest, however, that if Mary tweaks her story a little bit, then she is able to legitimately flip-flop. Consider the scenario in which Mary says that she intends to vote Leave for the complex reason that she is of the opinion that the interests of her constituents are best served by her being their representative in the legislature and that she will most likely lose her seat at the next election if she fails to vote Leave. Mary's decision to vote Leave is, we may assume, motivated by a concern for the interests of her constituents, and this concern for the interests of her constituents is in itself sufficient to motivate her to vote Leave. Crucially, Mary does not vote Leave out of self-interest. Voting Leave is simply a necessary, strategic decision that likely enables her to fulfil her obligations towards her constituents in terms of being an agent for them and seeking to further their interests.

If we are to take serious the idea that Mary is empowered by her constituents to judge for them what ought to be done, and has freedom to act as she sees fit in order to further their interests, she cannot be faulted, from the perspective of the trustee view, if she takes this argumentative route. If one dislikes the conclusion that Mary can legitimately flip-flop by utilizing this argumentative move, then one has to object to the wording of the trustee view and somehow change it to the effect that it blocks this argumentative move by Mary.

Third, Mary can suggest that Issue is of extraordinary political importance, and while she in general is of the opinion that the trustee view is correct, the current situation is unique to an extent that makes it justifiable for her to break ranks with this view and vote in a manner that does not reflect her preferred view. She is of the opinion that voting Remain is the correct thing to do, but she chooses to

vote Leave purely out of deference to the majority view. This is an unconvincing argument and, by canvassing it, Mary cannot legitimately flip-flop. The trustee view is in effect abandoned if Mary can pick and choose with respect to what issues are of such uniqueness/importance that she is justified, when her personal political beliefs are in conflict with the majority view, in abandoning the former and voting in accordance with the latter. The trustee view does not say that Mary only sometimes should be the organ of her own sentiments and be a professional agent empowered by her constituents to judge for them what ought to be done. The trustee view demands of Mary that she is to be such an agent whenever she is engaged in deliberation about how to vote.

I suggest, however, that Mary can legitimately flip-flop if she tells a slightly different story, from the one outlined above, about why she flip-flops. The crucial element in this story is, again, that it is legitimate for her to allow the electoral input of her constituents to be a decisive factor in her deliberation about how to vote in the legislature. After the referendum, Mary has knowledge of what the majority view is, and she allows for this new input to be something that can be taken into account, together with a number of other facts, and opinions of hers, relating to Issue when deliberating again about Issue. One such opinion could very well be an assessment to the effect that Issue is an issue of extreme political importance as compared to other issues. Having once again engaged in personal deliberation, Mary arrives at the new conclusion that voting Leave is the correct thing to do. Voting Leave is, now, emphatically her preferred view.

The suggestion that Mary can legitimately flip-flop if she tells this story may come across as being counterintuitive and therefore implausible. However, if Mary is an agent empowered by her constituents to judge for them what ought to be done and has freedom to act as she sees fit in order to further their interests, it is very difficult to see how Mary, in virtue of telling this story as to why she flip-flops, is in any conflict with the trustee view. This is so even in cases in which Mary's new

judgment about what to vote is mistaken because she, for example, overlooks salient facts relating to Issue, fails to arrive at a proper appreciation of the political importance of Issue or puts too much emphasis on the electoral input of her constituents as compared to the emphasis she puts on other facts.

Fourth, Mary can say that while E still holds, E is no longer evidence for Remain but is now evidence for Leave. In this scenario, Mary can say that the new information about what the majority view is is not a piece of information that has played a role in her decision to flip-flop. This decision has been driven solely by the fact that she now sees all the evidence that she previously took to be reasons for voting Remain to be reasons for voting Leave. I suggest that if Mary makes use of this argumentative strategy, she can legitimately flip-flop. This strategy is, however, intellectually immensely radical. It is constitutive of an enormous alteration in one's thinking if one suddenly changes one's outlook such that the set of reasons that one previously took to be evidence for Remain is now evidence for Leave. Consider the intellectual narrative of Mary. Prior to the referendum, Mary takes the fact that Remain likely leads to economic growth and high employment and is an essential element of a just immigration policy as evidence that should make one vote Remain. These likely effects of Remain are, by Mary, taken to be conclusive reasons for being in favor of Remain. After the referendum, Mary is suddenly of the opinion that these likely effects of Remain are conclusive reasons for being in favor of Leave. Mary can only credibly maintain this change of heart if she has undergone a massive transformation in her political outlook. Things that previously were of little, or no, importance to her in coming to a decision about whether to endorse or reject a particular policy proposal must now be of immense importance to her and vice versa.

As a further observation on this argumentative strategy, it should be noted that it is likely to have radical consequences for the way Mary's constituents see her. These individuals have now experienced how their elected representative at one moment, on one particular issue, cites a particular

set of reasons as being evidence for a particular political position. Soon thereafter, the very same set of reasons is being cited as being evidence for the negation of that position. Such an experience is likely, and certainly ought, to make her constituents wary about how well she is able to represent their interests on future issues. If Mary can change her mind so massively on this issue, there is a chance that she can do it again on future issues, and an elected representative that does this is intellectually fickle and hardly a reliable representative to have in the legislature.

Perhaps one is not convinced by some, or all, of the previous examples of how Mary can legitimately flip-flop. An underlying worry one might have is that even if we accept the trustee view, is it not the case that when Mary makes certain representations about what she will do, this qualifies as an act of making a promise to her constituents? If so, is it not then dishonest of her to flip-flop?¹⁵ In an attempt to answer this question, it is perhaps fruitful to return to the discussion of the first way in which Mary might be able to legitimately flip-flop. Imagine that Mary is being asked by one of her constituents about what she intends to vote in the upcoming vote on whether Happyland should leave the Union of Happy States. Mary answers that she will vote Remain. This leads the constituent to ask Mary why she will vote Remain. Mary now says that she will vote Remain because of evidence E. Has Mary now made a promise to her constituent, and is it the case that if Mary goes on to vote Leave, she is being dishonest? I am not quite sure what to answer here. The important point, as I see it, is that Mary, in virtue of having given the answers she has, has now made it the case that there is a way of behaving for her that is illegitimate. Mary is at fault if she fails to vote Remain in the upcoming vote and acknowledges that E is still the case. What type of mistake has Mary made or, put differently, what is it that makes her behavior faulty?

¹⁵ This issue was raised by an anonymous reviewer from *Public Affairs Quarterly*. I thank the reviewer for probing me to think about, and try to answer, this objection.

I think that her mistake is most plausibly seen as consisting in the fact that she is being inconsistent. She says that E is evidence for voting Remain, but then fails to live up to her own advice. Perhaps one is inclined to say that Mary's fault is that of being dishonest towards her constituent. She has broken a promise to the constituent: namely the conditional one that if E obtains, then she will vote Remain. If this is the description of Mary's behavior that one favors, then I do not have any fundamental objection. However, I do not quite see why it is more helpful, or more attuned to the salient features of Mary's behavior, to describe her as being dishonest as opposed to being inconsistent. I argued above that there are ways for Mary to legitimately flip-flop and ways for her to illegitimately flip-flop if she accepts the trustee view. If I am correct about this, and if I am correct that the difference between being inconsistent and being involved in promise breaking is of no great conceptual importance in relation to an evaluation of Mary's behavior, it is correct that there are ways that Mary can flip-flop without being involved in any kind of promise breaking. It is, for example, difficult to see what promise Mary is breaking if she flip-flops and votes Leave because she has become convinced that i) she will lose her seat in the legislature if she votes Remain and ii) no other candidate can represent the interests of her constituents' as well as she can.

As a supplement to these considerations, it should be acknowledged that there is at least one clear-cut way in which Mary can be engaged in promise breaking towards her constituents. In virtue of accepting the role as the representative of the constituents' interests in the legislature, Mary promises to always seek to further the interests of the constituents' and she promises to always vote her preferred view. If she fails in any of these two endeavors, she has certainly broken a promise to her constituents.

4. How to legitimately flip-flop when accepting the delegate view

If Mary accepts the delegate view, then it is quite easy for her to legitimately flip-flop. She can just, borrowing elegant phrases from Mill, insist that she is bound by the instructions of her constituents (Mill 1861: 261). Her role in the legislature is simply that of being the organ of her constituents' sentiments, and she is only empowered to act for them. This, together with the new information about what the majority view is, compels, and legitimizes, her in voting Leave. Her previous view on Issue was formed on the basis of incomplete evidence. With the arrival of the information constituted by the electoral input of her constituents, the evidence available to her, relating to Issue, is more complete, and she therefore changes her mind and votes Leave. It is important to note that Mary's use of this argumentative strategy has serious implications for all future votes. Mary is now committed to seeking the input from her constituents on all issues that arise in the future, and she is obliged to vote the majority view on all occasions no matter what her own opinion is and no matter how convinced she is that the majority view is mistaken and is a view that is detrimental to the interests of her constituents.

The flipside of this argument about how Mary can legitimately flip-flop is that Mary is involved in illegitimate flip-flopping if she votes Leave even partly because she, for example, has come to believe that i) it is not likely that Remain leads to economic growth and high employment or that Remain is not an essential element of a just immigration policy; ii) E is evidence for Leave; iii) she will likely lose her seat in the legislature if she fails to vote Leave; iv) her tossing a coin and getting Tails is incontrovertible evidence in favor of voting Leave. Mary's flip-flopping would be illegitimate in instances i) – iv) precisely because she in all of these instances fails to be an ambassador for the majority view. In each of them, Mary does not vote Leave solely because this is the majority view. Only by coincidence is Mary voting in favor of the majority view, and this is sufficient to establish that

Mary fails to live up to the normative obligations that her acceptance of the delegate view imposes on her.

5. Should the trustee view or the delegate view be accepted?

Assume that everything said in the previous sections, about how Mary can and cannot legitimately flip-flop, is correct. This assumption is compatible with it being the case that both the trustee view and the delegate view are false. Moreover, one might be of the opinion that both the trustee view and the delegate view are indeed false and that the reason for this is that they both have a counterintuitive implication. It is a counterintuitive implication of the trustee view that there are no conditions that are so extraordinary that they make it legitimate for Mary to temporarily abandon this view and vote against her preferred view. Moreover, it is a counterintuitive implication of the delegate view that there are no conditions that are so extraordinary that they make it legitimate for Mary to temporarily abandon this view and vote against the majority view.

Motivated by these considerations, one might feel inclined to accept a kind of middle-position that can be labelled the “Trustee View Light”. This is the view that:

Sometimes Mary must vote against the majority view, and sometimes Mary must respect the electoral input of her constituents and vote in accordance with the majority view.

The Trustee View Light is a general principle that is compatible with numerous sets of more specific principles.¹⁶ One such set of more specific principles is the set in which what demarcates one principle from the other principles within the set is the choice of criterion for determining exactly those cases in which Mary must respect the electoral input of her constituents and vote in accordance with the

¹⁶ The Trustee View Light is, for example, compatible with both the set of principles that makes up Newtonian physics and the set of principles that constitutes Euclidean geometry.

majority view. I submit that many of the more specific principles within this set are implausible because they employ a completely arbitrary criterion for when Mary must respect the electoral input of her constituents. Examples of such implausible more specific principles include, for example, those that, respectively, say that Mary must respect the electoral input of her constituents when voting in the legislature on Tuesdays or Thursdays, or when the outside temperature is less than 15°. This is not to say that all more specific principles within this set are plausibly rejected because they employ an arbitrary criterion for when Mary must respect the electoral input of her constituents. I now move on to a discussion of what, in my view, is the most plausible and interesting specific principle within the set in question. Let us use “Trustee View Light Specific Principle” (TVLSP) to denote this principle. TVLSP says:

Mary must vote her preferred view on all issues except those on which a referendum has been held. On such issues, Mary must vote in accordance with the majority view even if this view differs from her preferred view.¹⁷

If TVLSP is correct, then both the trustee view and the delegate view are false. On the trustee view, Mary must always either vote her preferred view or resign her seat in the legislature, and on the delegate view, Mary must always either vote in accordance with the majority view or resign her seat in the legislature. I suggest that TVLSP should be rejected. In order to underwrite this suggestion, it is useful to consider, what I take to be, the most plausible argument for the conclusion that TVLSP is normatively superior to the trustee view. In semi-formal form, this argument looks like this:

¹⁷ TVLSP articulates the idea that the result of a referendum on Issue, as opposed to, say, i) the view on Issue generally embraced by some, or all, of Mary’s constituents at a town hall meeting, ii) the result of an opinion poll on Issue or iii) the result of an aggregate of opinion polls on Issue, takes the shape of being a direct order to Mary as to how she should vote.

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|---------|--|-------------------------------|
| 1 | (1) Decision K on Issue is more legitimate when it is the outcome of procedure D than it is when it is the outcome of procedure T. ¹⁸ | Premise |
| 2 | (2) It is desirable to make decisions that are as legitimate as possible. | Premise |
| 1,2 | (3) Decision K on Issue is more legitimate when it is the outcome of procedure D than it is when it is the outcome of procedure T and it is desirable to make decisions that are as legitimate as possible. | Conjunction Introduction 1, 2 |
| 4 | (4) If decision K on Issue is more legitimate when it is the outcome of procedure D than it is when it is the outcome of procedure T and it is desirable to make decisions that are as legitimate as possible, then TVLSP is normatively superior to the trustee view if TVLSP allows that some decisions are made through procedure D and the trustee view does not allow that some decisions are made through procedure D. | Premise |
| 1,2,4 | (5) TVLSP is normatively superior to the trustee view, if TVLSP allows that some decisions are made through procedure D and the trustee view does not allow that some decisions are made through procedure D. | Conditional Elimination 3, 4 |
| 6 | (6) TVLSP allows that some decisions are made through procedure D and the trustee view does not allow that some decisions are made through procedure D. | Premise |
| 1,2,4,6 | (7) TVLSP is normatively superior to the trustee view. | Conditional Elimination 5, 6 |

This argument is valid.¹⁹ The defender of TVLSP is also likely to suggest that it is sound, and if she does this, then she is committed to the view that the first premise is true. However, if she thinks that this premise is true, then it is quite mysterious why she accepts representative democracy to begin with

¹⁸ D is the kind of procedure that is found in a direct democracy in which the entire electorate is given a chance to vote on Issue. T is the kind of procedure that is found in a representative democracy in which the electorate is given a chance to elect an individual who then is given a chance to vote on Issue. The assumption that decision K on Issue is more legitimate when it is the outcome of procedure D than it is when it is the outcome of procedure T squares well with a more broad view to the effect that what ultimately confers moral legitimacy on decision K on Issue is the fact that all members of the electorate, who must live with the consequences of K, have had a chance to vote on Issue and thereby have had an explicit opportunity to personally either consent to, or reject, decision K. This more broad view has much in common with a consent-based argument for the claim that democracy is necessary for legitimate authority. This argument asserts that “when people participate in the democratic process, by their act of participation they consent to the outcome, even if it goes against them. Their participation thereby lends legitimacy to the outcome and perhaps even to the democratic assembly that is elected by citizens. On this account, the acts of voting, for example, are also acts of consent to the outcome of the voting. So participants are thereby obligated to comply with the decision made by the majority” (Christiano 2015).

¹⁹ The form of the argument is:

- | | | |
|---------|-----------------------|--------|
| 1 | (1) P | Prem |
| 2 | (2) Q | Prem |
| 1,2 | (3) P&Q | 1,2 &I |
| 4 | (4) (P&Q)→ ((R&~S)→C) | Prem |
| 1,2,4 | (5) (R&~S) → C | 3,4 →E |
| 6 | (6) (R&~S) | Prem |
| 1,2,4,6 | (7) C | 5,6 →E |

as she must do in virtue of defending TVLSP.²⁰ If one is committed to the truth of the first premise, then it, after all, follows that all forms of representative democracy, irrespective of what particular obligations each of these forms saddles legislators with, are normatively inferior to all versions of direct democracy.

Let me try to address one objection that the defender of TVLSP can field in response to this argument. Historically, one of the most common criticisms of direct democracy has been that it is unable to function efficiently in large polities (Dalton, Burklin, and Drummond 2001). Quite simply, it is too difficult and cumbersome in terms of practical matters to get a large number of individuals to congregate at polling stations and vote on each issue. It is much more practical to hold elections with some fairly long interval in which representatives are elected who will then represent the interests of their respective constituents in the legislature. Call this “the objection from practicality”. The defender of TVLSP could utilize the objection from practicality and say that though direct democracy is normatively superior to representative democracy, the former has certain, insurmountable practical problems. The best thing to do is therefore to endorse a version of representative democracy in which i) referenda are sometimes called and ii) legislators have exactly those obligations stipulated by TVLSP.

I do not find this line of reply convincing. In the past, the objection from practicality has had much in favor of it, but now the widespread availability of the internet, desktop computers, tablets, smartphones and secure voting software makes the objection rather implausible. To this, one might object that even the technologically most sophisticated type of voting software available today is still

²⁰ This is on the assumption that the defender of TVLSP does not, in the end, hold that some version of direct democracy is preferable to all versions of representative democracy and does not merely defend TVLSP, against the trustee view, as part of some purely academic exercise.

deficient in terms of security.²¹ This type of software is still too easily hacked, and one should not run the risk of having an election result manipulated by an illegitimate tampering of votes. There are, however, two powerful replies to this objection.

First, traditional types of ballot voting are also not immune to illegitimate tampering. History is full of examples of such tampering (Lehoucq 2003). Second, our world is one in which internet trade and internet banking are types of services that i) are used by billions of people (across all demographic groups) and ii) facilitate that trillions of US dollars annually can change hands relatively unproblematic. In light of this, it is hard to see why opposition to voting, over the internet, from a desktop computer, tablet or smartphone is justified for security reasons. Such opposition seems simply to be making a fetish out of voting security. There is, I submit, simply no good reason to insist on a higher level of security, when it comes to casting a vote, than when it comes to using internet banking to wire a vast sum of money or using a web based platform to buy stocks for an equally vast amount of money.

To this, one might reply: “Okay, you have successfully dismissed one argument in favor of the conclusion that TVLSP is normatively superior to the trustee view, but despite your suggestion that this is the most plausible argument in favor of that conclusion, there might very well be other arguments that do a convincing job of establishing that conclusion. Since you have done nothing to consider, much less establish the unsoundness of such other arguments, you simply have not done enough to provide a secure footing for rejection of the idea that TVLSP is normatively superior to the trustee view”. A convincing reply to this point consists in saying that any minimally plausible argument in favor of the conclusion that TVLSP is normatively superior to the trustee view must invoke one version

²¹ A number of companies provide easy-to-use, cheap and secure voting software that uses encryption technology for added security. See, for example, <https://www.opavote.com/> and <https://www.simplyvoting.com/> [accessed 05/05-2018].

or another of premise (1) of the above argument. Moreover, any argument that invokes this premise is immediately susceptible to the kind of criticism I outlined above about how acceptance of this premise sits very uneasily with acceptance of representative democracy. All in all, it is plausible to suggest that there is no conceptually stable position that, on the one hand, endorses a version of representative democracy and, on the other hand, ranks TVLSP over the trustee view. If one prefers TVLSP over the trustee view, then one is, I submit, driven towards a rejection of representative democracy and into the arms of a version of direct democracy.

Assume that it is correct to hold that the trustee view is more plausible than TVLSP. This is compatible with it being the case that the delegate view is more plausible than the trustee view. In this paper, I offer no arguments as to why this is not the case. I just assume, convinced by the arguments of, for example, (Mill 1861) and (Burke 1852) that when it comes to a choice between these two views, the trustee view is the more plausible one.²²

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²² I wish to thank an anonymous reviewer from *Public Affairs Quarterly* for insightful and constructive comments on an earlier version of this paper.

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